

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VIRGO MEDICAL SERVICES, INC.
Employer

and

Case 04-RC-104485

TEAMSTERS UNION LOCAL NO. 115
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹ In denying review, we do not reach the question of whether the Board's test in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. Aug. 15, 2013), applies under the circumstances of this case.²

Dated, Washington, D.C., October 21, 2014

KENT Y. HIROZAWA,	MEMBER
HARRY I. JOHNSON, III,	MEMBER
NANCY SCHIFFER,	MEMBER

¹ In its request for review, the Employer contends, for the first time in this case, that the Regional Director was without authority to issue his decision because the Board could not appoint him to his position on January 29, 2013 due to the invalidity of the recess appointments of two of the Board's three members and the consequent absence of a quorum. *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014). Assuming that this issue is properly before the Board, we find no merit to the Employer's contention. We find that the General Counsel was authorized to appoint Dennis Walsh as the Regional Director pursuant to the Board's order contingently delegating certain authorities to other NLRB officials. See Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge, 76 Fed. Reg. 73719 (Nov. 29, 2011). Further, the Board on July 18, 2014, in an abundance of caution and with a full complement of five Members ratified nunc pro tunc and expressly authorized the selection of Mr. Walsh. Finally, Regional Director Walsh on July 30, 2014 affirmed and ratified any and all actions taken by him or on his behalf from March 10, 2013 to July 18, 2014. See *Durham School Services*, 361 NLRB No. 66 (2014); *Pallet Companies, Inc.*, 361 NLRB No. 33, slip op. at 1 (2014); *ManorCare of Kingston, PA*, 361 NLRB No. 17, slip op. at 1 fn. 1 (2014). Accordingly, we reject the Employer's contention regarding the validity of Regional Director Walsh's appointment.

² Although he finds this to be a close case, Member Johnson joins in denying review of the Regional Director's finding that the Employer has not rebutted the single-facility presumption. He notes that *Dattco, Inc.*, 338 NLRB 49 (2002), cited by the Employer, is distinguishable because the employee contact and interchange there is greater than shown in this case.